

MAR 16 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

SOMCHAI JAFFA,

Defendant - Appellee.

No. 04-50408

D.C. No. CR-03-00420-RMT-3

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Robert M. Takasugi, District Judge, Presiding

Submitted March 8, 2006^{**}

Before: CANBY, BEEZER and KOZINSKI, Circuit Judges.

The United States appeals from the district court's judgment, which sentenced Jaffa to "time served" following Jaffa's guilty plea conviction for

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

conspiracy to possess stolen mail, in violation of 18 U.S.C. § 371. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we vacate the sentence and remand.

The government contends that Jaffa's sentence should be vacated and that this case should be remanded for resentencing because the district court, which sentenced Jaffa after the United States Supreme Court's decision in *Blakely v. Washington*, 542 U.S. 296 (2004), but before its decision in *United States v. Booker*, 543 U.S. 220 (2005), believed that it was not permitted to find any additional enhancements in light of *Blakely*. We agree. *See Booker*, 543 U.S. at 267-68 (vacating and remanding defendant Fanfan's sentence upon the government's appeal where the sentencing court held that *Blakely* was applicable to the federal sentencing guidelines and imposed a sentence that was authorized by the jury verdict, but lower than authorized by the guidelines).

Jaffa contends that remanding for resentencing violates his due process rights and ex post facto principles. This contention is foreclosed by *United States v. Dupas*, 419 F.3d 916, 920-21, 24 (9th Cir. 2005).

SENTENCE VACATED AND REMANDED.